

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT SMITH, Jr., ) CASE NO. C05-0278-JLR  
Petitioner, )  
v. )  
JAMES SPALDING, ) REPORT AND RECOMMENDATION  
Respondent. )

Petitioner has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, along with an application for leave to proceed *in forma pauperis*. The petition challenges petitioner's conviction in 1978 for first degree assault. The court's records reveal that petitioner previously filed another § 2254 petition in 2001. The court dismissed the previous petition as a successive petition. (Dkt. #40 in Case No. C00-1051R). In the Order dismissing the previous petition, the court advised petitioner as follows:

Petitioner shall not submit another habeas action to this court that challenges his 1978 conviction or probation revocation until he obtains permission to file from the Court of Appeals for the Ninth Circuit. His failure to obtain permission might result in dismissal with prejudice for failure to comply with a court order.

(*Id.* at 2) (emphasis in original).

Thus, it appears that the current habeas petition is at least petitioner's third petition. The court is without jurisdiction to consider such a petition until the Ninth Circuit Court of Appeals

01 has authorized its filing. 28 U.S.C. § 2244(b)(3)(A); Circuit Rule 22-3. Petitioner has not  
02 provided any evidence that he has sought or received such permission from the Ninth Circuit.  
03 Accordingly, the current petition should be dismissed without prejudice. A proposed Order  
04 accompanies this Report and Recommendation.

05 DATED this 17th day of March, 2005.

06 s/ Mary Alice Theiler  
07 United States Magistrate Judge  
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